

8-8-2013

## State v. Webb Appellant's Brief Dckt. 40414

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	DOCKET NO. 40414
	)	
v.	)	Bannock Co. No. CR-2011-18986FE
	)	
LONNY EARL WEBB,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	

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**BRIEF OF APPELLANT**

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**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF BANNOCK**

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**HONORABLE DAVID C. NYE  
District Judge**

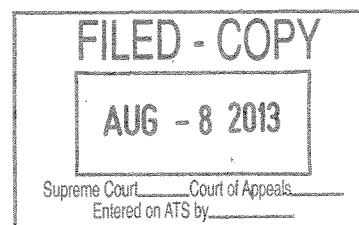
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## **TABLE OF CONTENTS**

	<b><u>PAGE</u></b>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE .....	1
Nature of the Case .....	1
Statement of the Facts and Course of Proceedings .....	1
ISSUES PRESENTED ON APPEAL .....	2
ARGUMENT .....	3
The district court erred when it determined that it did not have jurisdiction to hear Mr. Webb's motion to withdraw guilty plea.....	2
The district court abused its discretion and erred when it denied Mr. Webb's motion to withdraw his pleas of guilty.....	3
CONCLUSION.....	4
CERTIFICATE OF MAILING .....	5

## I. TABLE OF AUTHORITIES

### STATE CASES

<i>State v. Jakoski</i> , 139 Idaho 353, 354, 79 P.3d 711 (2003) .....	2
<i>State v. McFarland</i> , 130 Idaho 358, 361, 941 P.2d 330, 333 (Ct. App. 1997). ....	3
<i>State v. Ward</i> , 135 Idaho 68, 73, 14 P.3d 388, 392 (Ct. App. 2000). ....	3
<i>State v. Ballard</i> , 114 Idaho 799, 801, 761 P.2d 1151, 1153 (1998) .....	3

### COURT RULES

<i>ICR 33</i> .....	2, 3
<i>ICR 34</i> .....	2

## STATEMENT OF THE CASE

### **A. Nature of the Case**

Lonny Earl Webb appeals from the district court's order denying his motion to withdraw his plea of guilty to Felony DUI; and from sentence imposed thereon in which the district court imposed and executed a unified sentence of 10 years with four years fixed and six years indeterminate.

Mr. Webb asserts that the district court erred in denying his motion to withdraw his guilty plea.

### **B. Statement of the Facts & Course of Proceedings**

On November 7, 2011, Lonny Earl Webb was charged with Felony DUI, it being alleged that he was driving while under the influence of alcohol or drugs, and that it was a repeated offense within 15 years. (R., pp.1-2.). By Information, the State accused Mr. Webb with the felony DUI, and also with being a persistent violator. (R., pp.41-46.). Mr. Webb pleaded guilty to the Felony DUI charge on April 4, 2012, in exchange for the dismissal of the Persistent Violator charge. (R., pp.121-133.). On approximately June 1, 2012, the Defendant, through his attorney, was informed that the blood sample in his case had not been refrigerated in accordance with Idaho State Police procedure for nearly a month. (R., pp.145-147.). Because the blood sample evidence was a major factor in his decision to plead guilty, Mr. Webb filed a motion to withdraw his guilty plea. (R., pp.145-147.). The district court denied his motion, stating that because the time for appeal had passed without the filing of an appeal and therefore, the judgment had

become final, the district court did not have jurisdiction to hear the motion. (R., pp.150-155.). Mr. Webb appealed in a timely fashion. (R., pp.165-167.).

## **II. ISSUES PRESENTED ON APPEAL**

- A. Did the district court err when it determined that it did not have jurisdiction to hear Mr. Webb's motion to withdraw guilty plea?**
- B. Did the district court abuse its discretion and err when it denied Mr. Webb's motion to withdraw his pleas of guilty?**

## **III. ARGUMENT**

- A. The district court erred when it determined that it did not have jurisdiction to hear Mr. Webb's motion to withdraw guilty plea?**

Mindful of the holdings of *State v. Jakoski*, 139 Idaho 353, 354, 79 P.3d 711 (2003), and the subsequent Idaho cases following the ruling in that case that a District Court loses jurisdiction to hear a motion to withdraw a guilty plea after the decision on the plea becomes final due to expiration of the time for appeal, Mr. Webb nonetheless submits that it is in the interests of justice for the court to allow him to withdraw his guilty plea. Mr. Webb argues that allowing a conviction based on a guilty plea to stand when new evidence that could not have been discovered by the Defendant prior to entry of plea surfaces which calls into question a key piece of the evidence against him is a manifest injustice, and so therefore meets the manifest injustice standard under ICR 33. ICR 34 allows a Defendant to move for a new trial upon newly discovered evidence within two years of the original trial. ICR 34. Therefore, while mindful of *Jakoski*, it is Mr. Webb's position that ICR 33 should be read to allow a similar time frame under similar circumstances.

**B. The district court abused its discretion and erred when it denied Mr. Webb's motion to withdraw his pleas of guilty.**

The decision to grant or deny a motion to withdraw a guilty plea falls within the sound discretion of the trial court. *State v. McFarland*, 130 Idaho 358, 361, 941 P.2d 330, 333 (Ct. App. 1997). Trial courts are encouraged to exercise such discretion liberally. *State v. Ward*, 135 Idaho 68, 73, 14 P.3d 388, 392 (Ct. App. 2000).

Idaho Criminal Rule 33(c) provides: [a] motion to withdraw a guilty plea may be made only before the sentence is imposed or imposition of the sentence; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his guilty plea."

A motion to withdraw a guilty plea filed after sentencing can be granted only to correct a "manifest injustice." *State v. Ballard*, 114 Idaho 799, 801, 761 P.2d 1151, 1153 (1998). "This strict standard is justified to insure that an accused is not encouraged to plead guilty to test the weight of the potential punishment and withdraw the plea if the sentence is unexpectedly severe." *Ward*, 135 Idaho at 72, 14 P.3d at 392 (citing *McFarland* 130 Idaho at 361, 941 P.2d at 333).

In the case at hand, new evidence was discovered that called into question the blood sample evidence that supported the charge of DUI. Per the letter provided by the State, the sample was not kept refrigerated, as required by Idaho State Police standards, for almost a month. (R., pp.145-147.). In fact, at the hearing on the motion to withdraw guilty plea, the parties essentially stipulated on the record that the situation was serious enough to allow Mr. Webb to withdraw his guilty plea. (Tr., p.29, L.9- p.32, L.2). The district court was willing to honor the agreement of the parties. (Tr., p. 32,

L.2). However, in its opinion, the court later stated that it did not feel that Mr. Webb had made the appropriate showing to allow him to withdraw his guilty plea. (R., pg. 154.).

Because the blood sample evidence regarding the BAC of Mr. Webb was a primary motivating factor in deciding to enter his guilty plea, Mr. Webb submits that for the district court to deny his motion amounts to a manifest injustice, and that therefore the district court abused its discretion in so ruling.

#### **V. CONCLUSION**

Based on the above, Mr. Webb respectfully requests that this Court reverse the order denying Mr. Webb's motion to withdraw his guilty plea.

DATED this 7<sup>th</sup> day of August, 2013.

  
\_\_\_\_\_  
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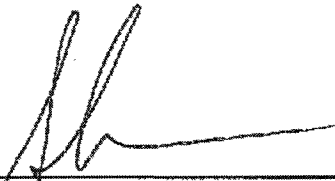


CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 7<sup>th</sup> day of August, 2013, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing a copy thereof to be placed in the U.S. Mail, addressed to:

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